

ANKIT BATRA
v
MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR
[2014] HCASL 197
M29/2014

1 The applicant, a citizen of India, seeks special leave to appeal against orders of a single judge of the Federal Court of Australia (Murphy J) dismissing an appeal against orders of the Federal Magistrates Court of Australia. The Federal Magistrate (Riley FM) dismissed the applicant's application for judicial review of a decision by the Migration Review Tribunal ("the Tribunal") affirming a decision by a delegate of the first respondent to cancel the applicant's General Skilled Migration (Subclass 885) visa.

2 The applicant made an application for a Subclass 885 visa on 17 February 2008. Under the Migration Regulations 1994 (Cth), the skills required of a holder of a Subclass 885 visa were to be assessed by a "relevant assessing authority". At the relevant time, both the applicant and the first respondent believed that Trades Recognition Australia ("TRA") was a "relevant assessing authority". The applicant applied for a skills assessment from TRA. In doing so, the applicant submitted to TRA a work reference claiming the applicant had completed more than 900 hours of unpaid work as a pastry cook. The applicant received a favourable skills assessment from TRA dated 20 November 2007 and was granted a Subclass 885 visa on 9 December 2008.

3 It subsequently emerged that the work reference provided by the applicant to TRA was false, and that TRA was not, in fact, a "relevant assessing authority".

4 On 18 June 2010, a delegate of the first respondent notified the applicant of the first respondent's intention to cancel the applicant's visa on the basis that the applicant had breached ss 101 and 103 of the *Migration Act* 1958 (Cth) ("the Act") by providing a "bogus document". The applicant did not deny that the work reference was false. Instead, he argued that the skills assessment was a nullity because the TRA was not a "relevant assessing authority" and that no bogus document had therefore been provided. On 24 September 2010, the delegate decided to cancel the applicant's visa under s 109 of the Act.

5 In the Tribunal and the courts below, the applicant maintained his argument that there had been no breach of ss 101 or 103 of the Act on the basis that the skills assessment was a nullity. He also argued that the delegate had otherwise failed to meet the requirements of s 109 of the Act. Both of these arguments were dismissed by the Tribunal, the Federal Magistrates Court and the Federal Court.

6 The applicant now seeks special leave to appeal to this Court, relying on the same arguments as those agitated in the Federal Court, and a new complaint

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concerning s 3ZQU of the *Crimes Act* 1914 (Cth). The application is brought well out of time and the applicant seeks an order under r 41.02.2 of the High Court Rules 2004 dispensing with the requirement to comply with the time limit in r 41.02.1. It is not necessary to decide whether that order should be made.

7 There is no reason to doubt the correctness of the conclusions reached by the Federal Court on the two grounds of appeal agitated in the courts below. There is also no reason why the new complaint based on the *Crimes Act* 1914 (Cth) could not have been raised in the courts below. There is an insufficient factual foundation upon which to consider the complaint in this Court. An appeal to this Court would enjoy insufficient prospects of success to warrant a grant of special leave to appeal.

8 Pursuant to r 41.11.1 we direct the Registrar to draw up, sign and seal an order dismissing the application with costs.

K.M. Hayne
15 October 2014

S.M. Crennan